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guide

Charitable Status

A Practical Handbook
6th Edition

Julian Blake

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6th Edition

Julian Blake

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and Rosamund McCarthy

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Foreword

Where would this country be without charity? The United Kingdom, few seem to realise, is now the most centralised, business-dominated entity in the democratic world. The continued decline in adhesion to any faith or other value system, and to communalism, makes the world of charity an evermore indispensable repository for individual and collective altruism and engagement.

That was why, assisted by Keith Smith, I was originally prompted to write this handbook. The object was – and still is – to minimise the burden of charity law for charity trustees by giving them plain English, practical, astute advice.

That is also why I am delighted with the new team – Julian Blake, Alice Faure Walker and Christine Rigby – who are carrying that purpose forward. I could not want for a better trio given their deep experience of charity law in practice and their personal commitment to the sector as well as the aims of the handbook.

I thank them and everyone else at Bates Wells and Braithwaite who have contributed to this sixth edition, which, in particular, incorporates the major reforms of the Charities Act 2006. The handbook could not be in better hands.

As always, I doff my hat to that majority of my fellow citizens who actively sustain the wondrous world of charity.

Andrew Phillips
Bates Wells and Braithwaite
January 2008

Preface

Operating a charity has become a much bigger subject in the 27 plus years since the first edition of this handbook. We have seen 'the professionalisation of the sector'; the 'contract culture'; the growth of the Charity Commission from essentially a registrar into a highly influential sectoral regulator; two major statutes (in 1992/3 and 2006); a plethora of administrative reforms and the challenges and opportunities of the outsourcing of major public services and the social enterprise movement. During this time the sector itself has expanded at a rapid and consistent rate so, at this moment, there are more than 168,000 main registered charities, with many thousands of other voluntary and community organisations operating, whether knowingly or not, on a charitable basis.

During all these developments, the core principles of charitable status have remained essentially the same: a UK organisation is a charity if it has exclusively public benefit purposes and activities and if it applies all its assets, including any surpluses (or profits) to its purposes and not to benefit those involved in the organisation's operation. If an organisation is a charity it must (unless specifically excepted) register with the Charity Commission in England and Wales, or the equivalents in Scotland and Northern Ireland and must be accountable for its public benefit operation. A charity is entitled to significant tax advantages and has a brand identity which generates an extremely high level of public support and goodwill.

This sixth edition is, therefore, very much an updating of its predecessors: it provides the same straightforward explanations of what a charity is and how it should operate, while placing that information in its much changed context. Above all, it is intended to provide the same practical and necessary information, for the same dedicated and worthy audience as ever – the vast and infinitely varied citizens' army that is the UK's voluntary and community sector.

No individual has done more in this cause than the original author of this handbook, Andrew Phillips. As the founder of a new London-based firm of solicitors in 1970, Andrew applied the traditional socially engaged approach of the local solicitor to the national scene and invented the concept of the charity law practice as a self-contained discipline. This culminated in his leading contribution to the parliamentary debates on the Charities Act 2006 as Lord Phillips of Sudbury. I am privileged to have learned my trade at his knee and now to be one of over 30 members of the Charity and Social Enterprise Department at Bates Wells and Braithwaite, the firm that

Andrew created. I am also privileged to be his successor as the principal author of this seminal charity law publication, though the key to the firm and the handbook is that, to Andrew and to the many who have learnt from him, law, and especially charity law, is a practical subject, or it is nothing.

I am very grateful also, to colleagues at Bates Wells and Braithwaite, who have contributed to this edition, most especially Christine Rigby and Alice Faure Walker, who would properly be credited as my co-authors and also to Bill Lewis, Stephanie Biden and Rosamund McCarthy.

We are all deeply grateful for the support we have received from the Directory of Social Change over six editions of the handbook and particularly, in relation to this edition, John Martin and Lucy Muir-Smith, and to our editor Jacki Reason.

Julian Blake
Bates Wells and Braithwaite
January 2008

1 New charity law in 2006

The Charities Act 2006, applicable in England and Wales and coming into force over a period of several years from November 2006, will broadly reclassify the traditional four categories of charity, with some extensions and updating, into thirteen, and provide a range of other modernising provisions which will make life easier for organisations and individuals working across the spectrum of charitable activity. A high profile public debate about whether independent schools and private hospitals should retain their charitable status resulted in mild reform, avoiding any radical legal change but heightening regulatory scrutiny.

Scotland acquired its own charity legislation in the Charities and Trustee Investment (Scotland) Act 2005. This established the Office of the Scottish Charity Regulator (OSCR) as an independent regulator north of the border and marks some divergence in the definition of ‘charity’ and the regulatory approach from those applicable in England and Wales.

Northern Ireland is to follow suit in developing its own charity law and establishing its own Charity Commission of Northern Ireland (to be known as CCNI) during 2008.

For the purposes of this Handbook, dedicated to the practical, the fundamentals of charity law and most of the well-established principles and practices remain unchanged, and in this sixth edition they are placed in the new regulatory context.

It should be emphasised, though, that the Handbook deals predominantly with the position in England and Wales and not the separate legal jurisdictions of Scotland and Northern Ireland.

2 Why establish a charity?

2.1 The charitable sector

There are well over 500,000 UK charities. In June 2007 just over 190,000 were registered with the Charity Commission and this number was increasing by around 5,000 a year. The number of registered charities will increase significantly in 2008/09 when parts of the Charities Act 2006 come into force, requiring some of the previously exempt or excepted types of charity (such as universities) to register for the first time. At the same time, the Charity Commission is becoming more rigorous about ensuring charities that have become inactive are de-registered and that the charitable nature of registered charities is reviewed more systematically.

The charitable sector is still marvellously independent and diverse, a constant in everyday community life and an ever more important force in public policy and the national economy. Most charities start and remain small, but some grow to become household names. Others combine as federations of separately registered charities, as is the case with Citizens' Advice Bureaux and Women's Institutes. The great majority are community based, have no paid staff, and are particularly hard hit by extra bureaucracy.

Why do people go to the considerable trouble and (usually) expense of seeking charitable status?

2.2 Benefits of charitable status

Public recognition and support

Above all, in a sceptical age the public will be greatly reassured if your organisation is a charity. Despite the tiny number of highly publicised fraudsters, the word 'charity' continues to evoke a very positive response in most people. If you have to rely on public support, being able to say 'we are a charity' is almost indispensable. Equally important is the opportunity to make funding requests of grant-giving bodies, most of which are charitable foundations. They, like the public, are bombarded with requests for money. Some are prevented by their constitutions from making grants to non-

charities, and many more are inclined to operate an internal rule of thumb, excluding non-charitable applicants. The same can apply to public authority funding. This first winnowing may be crude, but it is a fact of life.

Eligibility for a grant from the Big Lottery Fund is dependent on the applicant being a ‘charitable, philanthropic or benevolent organisation’. The vast majority of applicants are charitable, and the definitions of philanthropic and benevolent are only very narrowly different.

Volunteers

Although there has been a steady increase in the number of paid staff in the charity sector, it is still underpinned by the traditional legions of volunteers. They exemplify what the public perceives as ‘charitable’, and undertake a multitude of functions for the charities they support, from acting as trustees (over a million), through helping with office administration and fundraising, to helping at the village fête (and often all of these). Without the magic word ‘charity’ it is far more difficult to get volunteers.

Tax benefits

The tax benefits for charities have steadily increased over the last 25 years and charities and donors get added satisfaction through the gift aid scheme (see below), which increases donations by diverting tax payments to the recipient charity. Charities in the UK probably enjoy the most generous tax regime in the world. The benefits include:

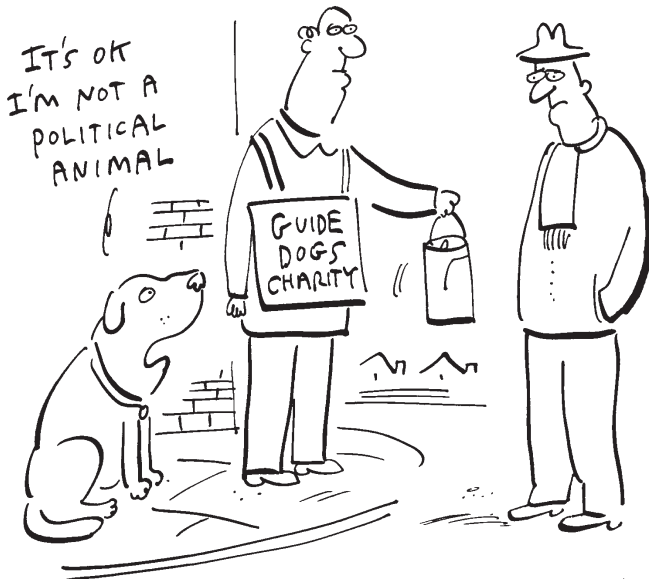
- income/corporation tax – not payable by charities on donations, rental income or surplus from business operations in pursuit of charitable objects – ‘primary purpose’ profits (see 11.3);
- gift aid on donations by individual taxpayers – the charity may reclaim the basic rate tax attributable to the income donated and the taxpayer may reclaim any higher rate element (see 12.1);
- gift aid on donations by UK companies – the company may deduct a gift as a charge on income from taxable profit (see 12.1);
- business rates – charities are exempt from 80% of the charge and may benefit from further relief, up to 100%, depending on local authority policy (see 12.2);
- stamp duty land tax on real property and stamp duty on shares – not payable by charities (see 12.2);
- inheritance tax – not payable from estates on gifts to charities on, or within seven years before, death (see 12.1);
- capital gains tax – not payable by donors on gifts to charity, or by charities on disposals (see 12.1);

- value added tax – some provisions are linked to goods and services provided by charities and some to not-for-profit operation – the rules are particularly detailed (see 12.2).

The taxation system is nonetheless complex, has changed rapidly in recent years and remains subject to change, particularly in annual Finance Acts (see chapter 12).

2.3 Possible disadvantages of becoming a charity

- Charity law imposes high standards of stewardship (see chapters 8 and 9).
- As public benefit organisations, charities are subject to a corresponding level of regulation and the bureaucracy that comes with it (see chapter 10).
- The general rule against charity trustees benefiting personally from their charity precludes (subject to limited exceptions) board of management members being paid (but see 8.5).
- Trading activities will be restricted to those pursuing the relevant charitable purposes or, subject to limited exceptions, those undertaken through a separate trading arm (see chapter 11).
- A charity may not undertake partisan political activity and campaigning (as distinct from activities in pursuit of its objects touching the political sphere) (see chapter 13).



Appendix I

USEFUL CONTACTS

acevo (The Association of Chief Executive Officers of Voluntary Organisations)

1 New Oxford Street, London WC1A 1NU

Tel: 0845 345 8481; fax: 0845 345 8482; email: info@acevo.org.uk; website: www.acevo.org.uk

Runs training and induction programmes and coordinates a network for members to share expertise.

Architectural Heritage Fund

Alhambra House, 27–31 Charing Cross Road, London WC2H 0AU

Tel: 020 7925 0199; fax: 020 7930 0295; email: ahf@ahfund.org.uk; website: www.ahfund.org.uk

Provides advice and funding in relation to architectural heritage projects. Can provide a model constitution for architectural heritage trusts.

Action with Communities in Rural England (ACRE)

Somerford Court, Somerford Road, Cirencester, Gloucestershire GL7 1TW

Tel: 01285 653477; fax: 01285 654537; email: acre@acre.org.uk; website: www.acre.org.uk

Provides information and advice on rural community development and setting up projects to support local action.

Arts Council England

14 Great Peter Street, London SW1P 3NQ

Tel: 0845 300 6200; textphone: 020 7973 6564; fax: 020 7973 6590; email: enquiries@artscouncil.org.uk; website: www.artscouncil.org.uk

The main channel for distribution of government money for the arts. Its information unit can provide model constitutions for arts groups.

Arts & Business

Nutmeg House, 60 Gainsford Street, Butler's Wharf, London SE1 2NY
Tel: 020 7378 8143; fax: 020 7407 7527; email: head.office@AandB.org.uk;
website: www.aandb.org.uk

Promotes, and provides advice in relation to, business sponsorship of the arts.

Association of Charitable Foundations

Central House, 14 Upper Woburn Place, London WC1H 0AE
Tel: 020 7255 4499; fax: 020 7255 4496; email: acf@acf.org.uk; website:
www.acf.org.uk

Membership body for grant-making trusts and foundations dedicated to the promotion of good practice and the encouragement of philanthropic giving.

Association of Charity Officers

Five Ways, 57/59 Halford Road, Potters Bar, Hertfordshire EN6 1HS
Tel: 01707 651777; fax 01707 660477; email: info@aco.uk.net; website:
www.aco.uk.net

Liaises between, and represents, charities in the welfare and social services field.

bassac

33 Corsham Street, London N1 6DR
Tel: 0845 241 0375; fax: 0845 241 0376; email: info@bassac.org.uk; website:
www.bassac.org.uk

The national network of multi-purpose organisations that provide services and community development support and host smaller community initiatives. Represents them at a national level and provides strategic support.

Bates Wells & Braithwaite

2–6 Cannon Street, London EC4M 6YH
Tel: 020 7551 7777; fax: 020 7551 7800; email: mail@bwblp.com; website:
www.bateswells.co.uk

Leading charity law solicitors. The author of this handbook, Julian Blake is a partner at BWB and is particularly involved with the application of corporate/commercial law to charities and social enterprises and the engagement between these organisations and the public sector. This edition follows five previous editions written by Andrew Phillips (Lord Phillips of Sudbury OBE), founder partner of BWB.

Big Lottery Fund

1 Plough Place, London EC4A 1DE
Tel: 020 7211 1800 (general); 0845 410 2030 (advice line); textphone: 0845 039 0204; email: general.enquiries@biglotteryfund.org.uk; website: www.biglotteryfund.org.uk

The largest distributor of Lottery money; created from a merger of the Community Fund and the New Opportunities Fund.

Business in the Community

137 Shepherdess Walk, London N1 7RQ
Tel: 0870 600 2482; fax: 020 7253 1877; email: information@bitc.org.uk; website: www.bitc.org.uk

A national partnership of companies, central and local government, the voluntary sector and trades unions. Promotes corporate responsibility and greater involvement in the community by developing and publicising schemes aimed at job creation.

Central Council for Physical Recreation (CCPR)

Burwood House, 14–16 Caxton Street, London SW1H 0QT
Tel: 020 7976 3900; fax: 020 7976 3901; email: info@ccpr.org.uk; website: www.ccpr.org.uk

The umbrella body for national governing and representative bodies of sports and recreation in the UK.

CaSE Insurance for Charities

aQmen Ltd, James House, Emlyn Lane, Leatherhead, Surrey KT22 7EP
Tel: 0845 225 2288; fax: 0845 225 2295; email: enquiries@aQmen.ltd.uk; website: www.caseinsurance.co.uk

Charities Advisory Trust (CAT)

Radius Works, Back Lane, London NW3 1HL
Tel: 020 7794 9835; fax: 020 7431 3739; email:
people@charitiesadvisorytrust.org.uk; website:
www.charitiesadvisorytrust.co.uk

Provides advice and training on all aspects of charity trading and shops, including in relation to establishing trading subsidiaries.

Charities Aid Foundation (CAF)

25 Kings Hill Avenue, Kings Hill, West Malling, Kent ME19 4TA
Tel: 01732 520000; fax: 01732 520001; email: enquiries@cafonline.org;
website: www.cafonline.org.uk

Promotes the flow of funds to charities, advises on many aspects of charitable giving and fundraising, gives information on grant-making trusts and provides financial services to charities and charity supporters.

Charities Tax Reform Group

Church House, Great Smith Street, London SW1P 3AZ
Tel: 020 7222 1265; fax: 020 7222 1250; email: info@ctr.org.uk; website:
www.ctr.org.uk

A campaigning organisation dedicated to seeking tax and VAT reforms for charities and concerned with charity law reform in these areas.

Charity Bank

PO Box 398, 194 High Street, Tonbridge, Kent TN9 9BD
Tel: 01732 774040; fax: 01732 774069; email: enquiries@charitybank.org;
website: www.charitybank.org

A charitable bank established by CAF (see above). Supports charities by providing loans on beneficial terms, particularly to organisations in disadvantaged communities.

Charity Commission for England and Wales

Charity Commission Direct, PO Box 1227, Liverpool L69 3UG
Tel: 0845 3000 218; textphone 0845 3000 219; fax: 0151 703 1555;
website: www.charity-commission.gov.uk

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